

## **REMARKS**

Claims 1-35 are now pending in the application. Claims 1-13 and 16-28, and 30-34 stand rejected. Claims 14, 15, and 29 are amended to place them in independent form as suggested by the Examiner. Claims 14 and 29 are also amended in view of the ruling in Superguide Corporation v. DirecTV Enterprises, Inc., et al., 358 F.3d 870 (Fed. Cir. 2004) as further explained below. Claim 35 stands allowed. Claims 2 and 20 are cancelled. Claims 4, 21, and 30 are amended to alter their dependencies in view cancellation of intervening claims. Claims 36 and 37 are added. Support for the added claims can be found in allowed claim 35. Claims 1 and 19 are amended. Support for these amendments can be found in originally filed claims 2 and 20 and in paragraph 21 of the originally filed Specification. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

## **REJECTION UNDER 35 U.S.C. § 102**

Claims 1-11, 16-26, 30-31, and 33-34 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Beine et al. (U.S. Pat. No. 6,304,347). This rejection is respectfully traversed.

Beine et al. is generally directed toward optical power management in an optical power network. In particular, the Examiner relies in Beine et al. to teach a request for a power ramp in the form of a request for power reduction that is communicated from a downstream network node to an upstream network node that has unexpectedly ramped up power. The Examiner also relies on Beine et al. to teach an acknowledgment from a downstream node in the form of a request for power reduction a request for power

reduction that is communicated from a downstream network node to an upstream network node that has unexpectedly ramped up power. However, Beine et al. does not teach determining that a path network component has made preparations to successfully accommodate a power ramp as requested based on an acknowledgment from the path network component that is received from downstream. Nor does Beine et al. teach sending an acknowledgment upstream to a network component requesting a power ramp, wherein the acknowledgement indicates that preparations to successfully accommodate the power ramp as requested have been completed.

Applicants' claimed invention is generally directed toward planned wavelength addition and removal in a wavelength division multiplexed system. In particular, Applicant's claimed invention is directed toward planned wavelength addition using acknowledgments from downstream network elements to upstream network elements requesting power ramps, wherein the acknowledgements indicate that the downstream network elements are prepared to accommodate the power ramps as requested. For example, independent claim 1, as amended, recites, "determining that a path network component has made preparations to successfully accommodate a power ramp as requested based on an acknowledgment from the path network component that is received from downstream." Also, independent claim 19, as amended, recites, "sending an acknowledgment upstream to a network component requesting a power ramp, wherein the acknowledgement indicates that preparations to successfully accommodate the power ramp as requested have been completed." Thus, Beine et al. does not teach all of the limitations recited in the independent claims.

Accordingly, Applicants respectfully request the Examiner reconsider and withdraw the rejections of independent claims 1 and 19 under 35 U.S.C. § 102(e), along with rejection on these grounds of all claims dependent therefrom.

**REJECTION UNDER 35 U.S.C. § 103**

Claim 32 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Beine et al. (U.S. Pat. No. 6,304,347). This rejection is respectfully traversed.

For discussion of the differences between Beine et al. and Applicants' claimed invention, Applicants respectfully direct the Examiners attention to remarks detailed above with respect to rejection under 35 U.S.C. § 102(e). These differences are significant.

In view thereof, Applicants respectfully request the Examiner reconsider and withdraw the rejection of claim 32 under 35 U.S.C. § 103(a) based on its dependence from an allowable base claim.

Claims 12 and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Beine et al. (U.S. Pat. No. 6,304,347) in view of Touma (U.S. Pat. No. 6,819,875). This rejection is respectfully traversed.

For discussion of the differences between Beine et al. and Applicants' claimed invention, Applicants respectfully direct the Examiners attention to remarks detailed above with respect to rejection under 35 U.S.C. § 102(e). These differences are significant.

Touma is generally directed toward optical wavelength multiplexing transmission apparatus and optical output control. In particular, the Examiner relies on Touma to

teach an optical amplifier that switches from an automatic power control mode to an automatic gain control mode. However, Touma does not teach determining that a path network component has made preparations to successfully accommodate a power ramp as requested based on an acknowledgment from the path network component that is received from downstream. Nor does Touma teach sending an acknowledgment upstream to a network component requesting a power ramp, wherein the acknowledgement indicates that preparations to successfully accommodate the power ramp as requested have been completed.

Applicants' claimed invention is generally directed toward planned wavelength addition and removal in a wavelength division multiplexed system. In particular, Applicant's claimed invention is directed toward planned wavelength addition using acknowledgments from downstream network elements to upstream network elements requesting power ramps, wherein the acknowledgements indicate that the downstream network elements are prepared to accommodate the power ramps as requested. For example, independent claim 1, as amended, recites, "determining that a path network component has made preparations to successfully accommodate a power ramp as requested based on an acknowledgment from the path network component that is received from downstream." Also, independent claim 19, as amended, recites, "sending an acknowledgment upstream to a network component requesting a power ramp, wherein the acknowledgement indicates that preparations to successfully accommodate the power ramp as requested have been completed." Thus, Touma does not teach all of the limitations recited in the independent claims. These differences are significant.

Accordingly, Applicants respectfully request the Examiner reconsider and withdraw the rejection of claims 12 and 27 under 35 U.S.C. § 103(a) based on their dependence from allowable base claims.

Claim 13 and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Beine et al. (U.S. Pat. No. 6,304,347) in view of Wight et al. (U.S. Pub. No. 2003/0151799). This rejection is respectfully traversed.

For discussion of the differences between Beine et al. and Applicants' claimed invention, Applicants respectfully direct the Examiners attention to remarks detailed above with respect to rejection under 35 U.S.C. § 102(e). These differences are significant.

Wight et al. is generally directed toward gain control in wavelength switched optical networks. In particular, the Examiner relies on Wight et al. to teach a Raman pump entering a static mode for a power ramp. However, Wight et al. does not teach determining that a path network component has made preparations to successfully accommodate a power ramp as requested based on an acknowledgment from the path network component that is received from downstream. Nor does Wight et al. teach sending an acknowledgment upstream to a network component requesting a power ramp, wherein the acknowledgement indicates that preparations to successfully accommodate the power ramp as requested have been completed.

Applicants' claimed invention is generally directed toward planned wavelength addition and removal in a wavelength division multiplexed system. In particular, Applicant's claimed invention is directed toward planned wavelength addition using acknowledgments from downstream network elements to upstream network elements

requesting power ramps, wherein the acknowledgements indicate that the downstream network elements are prepared to accommodate the power ramps as requested. For example, independent claim 1, as amended, recites, "determining that a path network component has made preparations to successfully accommodate a power ramp as requested based on an acknowledgment from the path network component that is received from downstream." Also, independent claim 19, as amended, recites, "sending an acknowledgment upstream to a network component requesting a power ramp, wherein the acknowledgement indicates that preparations to successfully accommodate the power ramp as requested have been completed." Thus, Wight et al does not teach all of the limitations recited in the independent claims. These differences are significant.

Accordingly, Applicants respectfully request the Examiner reconsider and withdraw the rejection of claims 13 and 28 under 35 U.S.C. § 103(a) based on their dependence from allowable base claims.

#### **ALLOWABLE SUBJECT MATTER**

The Examiner states that claims 14, 15, and 29 would be allowable if rewritten in independent form. Accordingly, Applicants have amended claims 14, 15, and 29 to include the limitations of the base claim and any intervening claims. Therefore, claims 14, 15, and 29 should now be in condition for allowance. Further, the Examiner has indicated that claim 35 is allowable.

#### **AMENDMENTS TO CLAIMS 14 AND 29**

Claims 14 and 29 are amended in view of the ruling in Superguide Corporation v. DirecTV Enterprises, Inc., et al., 358 F.3d 870 (Fed. Cir. 2004). The ruling in the aforementioned case construes the “at least one of ... and” language in claims in a manner not intended by the Applicants in the present invention at the time the claims were originally filed. Yet, the aforementioned case expressly asserts that applicants have the option of using “at least one of ... or” terminology in the claims, citing Brown v. 3M, 265 F.3d 1349, 1352 (Fed. Cir 2001), in order to express an “inclusive or” meaning; such a meaning is intended by the Applicants in the present application. Accordingly, Applicants assert that the amended language of claims 14 and 29 does not render the claims indefinite. Thus, the amended claims 14 and 29 should not draw a rejection under 35 U.S.C. § 112. Applicants also assert that these claims as amended recite the meaning intended by the Applicant at the time of filing, and are therefore of at least equivalent scope as originally filed. Alternatively or additionally, Applicants assert that the claims as amended are of broader scope than as originally filed. Thus, the amendments to these claims are not limiting amendments.


#### **CONCLUSION**

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt

and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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By:   
Timothy D. MacIntyre  
Reg. No. 42,824  
Jennifer S. Brooks  
Reg. No. 51,501

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600

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